

**MINUTES OF THE
JOINT PUBLIC EDUCATION APPROPRIATIONS SUBCOMMITTEE MEETING
MONDAY, FEBRUARY 2, 2009, 8:00 A.M.
Room 445, State Capitol**

Members Present: Sen. Howard A. Stephenson, Co-Chair
Rep. Merlynn T. Newbold, Co-Chair
Sen. Lyle W. Hillyard
Sen. Karen W. Morgan
Rep. Tim M. Cosgrove
Rep. Lorie D. Fowlke
Rep. Kevin S. Garn
Rep. Francis D. Gibson
Rep. Bradley G. Last
Rep. Rebecca D. Lockhart
Rep. Ronda Rudd Menlove
Rep. Marie H. Poulson
Rep. Phil Riesen

Members Absent: Sen. D. Chris Buttars
Rep. Gregory H. Hughes

Staff Present: Ben Leishman, Legislative Fiscal Analyst
Patrick Lee, Legislative Fiscal Analyst
Karen C. Allred, Secretary

Public Speakers Present: Jessie Kidd, Executive Director, DaVinci Academy Charter School
Darin Underwood, Audit Manager, Legislative Auditor General
Broc Christensen, Auditor Supervisor, Legislative Auditor General
Patti Harrington, State Superintendent, Utah State Office of Education
Margaret Bird, School Children's Trust Section, Utah State Office of Education
John Schaff, Auditor General, Legislative Auditor General
Leslie Castle, Member, State Board of Education
Rick Coleman, Audit Manager, Legislative Auditor General
Maria Stahla, Auditor Supervisor, Legislative Auditor General

A list of visitors and a copy of handouts are filed with the Subcommittee minutes.

Co-Chair Stephenson called the meeting to order at 2:22 p.m.

Sen. Stephenson commented that during interim the committee had a presentation by the six district sponsored High-Tech charter high schools. The DaVinci Academy is also a High-Tech school, but did not give a presentation at that time.

1. **DaVinci Academy Charter School** -- Jessie Kidd, Executive Director, DaVinci Academy Charter School reported that they are a high school grades 9-12, located in Ogden, Utah. She distributed a handout to the committee. Their mission is to provide a rigorous curriculum focused on science and the arts, to prepare students for college. This year they researched and asked the State Board of Education for an expansion to a 7-12 model, and in 2009-2010 they will open their doors to 7th and 8th graders. DaVinci is currently undergoing bonding to house the 7th and 8th graders, to put in a full size gymnasium and a state of the art auditorium. They overcame financial down falls, during the first few years, and now operate fiscally sound since last spring. Their focus on curriculum is project based, they do a lot of extensive research, and they exceed state standards. Their goal is to improve student learning, to facilitate parental involvement, maintain small class sizes, facilitate college placement for all students, stimulate high attendance, graduate 95% of senior class, teacher accountability, and facilitate real life professional experiences. They realize that as a Charter School they need to continually have a market edge and perform at a higher level.

Sen. Stephenson questioned how many years their \$150,000 world language grant from the U.S. Department of Education. Ms. Kidd responded that it is for three years. Sen. Stephenson commented that they can do a lot with \$50,000 a year. Ms. Kidd responded that because of the grant it is more than a classroom experience, it involves field trips and curriculum, and continues to grow the program. Sen. Stephenson questioned what kind of cooperation they receive in letting district students know about their opening, how many openings do they still have, and how do they get the word out. Ms. Kidd responded that Charter Schools have to do a lot of their own advertising. Ms. Kidd has called to meet with superintendents of Davis, Ogden, Weber and Box Elder School Districts to explain what they do and how they do it to start that education partnership. Sen. Stephenson asked if the school districts let them send mailers out to their students. Ms. Kidd responded that Davis district has been friendly and helpful. They feel competition with Ogden and Weber districts. Sen. Stephenson commented that when NUAMES was just beginning, because it was a three district consortium, they filled up quickly, but did not tell the students denied the opportunity, about DaVinci as an alternative choice.

2. **Approval of Minutes**

Rep. Gibson moved to approve the minutes of January 12, 2009 and January 21, 2009. The motion passed unanimously with Reps. Fowlke and Last absent for the vote.

3. **Legislative Audits:**

Sen. Stephenson would like someone to describe how the school children's trust audit was requested, for the record.

- a. *School Children's Trust Section*

Darin Underwood, Audit Manager introduced Broc Christensen, Auditor Supervisor and David Apple, staff auditor. Mr. Underwood reported that during the Feb. 7, 2008 meeting of this committee last year, the School Children's Trust Section requested a change to the Utah Code that would have potentially increased their budget to \$650,000 which was substantially larger than their appropriation of \$434,000. The subcommittee did not make that change but agreed to have the particulars of this request sent to interim study. This audit is essentially that study. In that same sub-committee meeting last year, the School Children's Trust mistakenly stated that the Auditor General would be in support of the funding increase. This was not the case because the Auditor General does not take a position without releasing an audit. There was an audit in 2007 of the School and Institutional Trust Lands Administration. After that audit the director of the Section approached the Auditor General and said that she could benefit from an audit of her organization. They suggested to the Co-Chairs, Sen. Stephenson and Rep. Last, that they could audit this section and review the authority, functions and funding, so the Co-Chairs sent a request letter to the Auditor General and it was approved, which brings this audit to our committee today.

Broc Christensen presented the audit of the School Children's Trust Section. They were asked to look at the authority with which they represent the beneficiaries and the efficiency and effectiveness of the Section in general. The State Treasurer is responsible for investing the school permanent fund from which the interest and dividends are distributed annually to the schools by the School Land Trust Program. The school community councils at each public school develop a plan, the local school boards approve the plan, with the monies going to the districts for disbursement to the schools.

The Auditors believe the School Children's Trust Section performs additional tasks other than their assigned duties of speaking for the beneficiaries, spending 45% of their resources administering the School LAND Trust Program. The School Children's Trust Section duties need to be reevaluated. There is a duplication of efforts in providing oversight between the USOE and the school districts and local school boards. The Auditors recommend the State Superintendent coordinate with the local school boards in providing oversight and training as a local function, and that the State School Board consider amending R277-477-4(D), to allow for more efficient and effective regional training, and random and selective audits of expenditures. The Auditors recommend the State Superintendent: direct that the School Children's Trust Section no longer staff the Investment Advisory Council; determine appropriate advocacy and lobbying activities for the School Children's Trust Section; and provide more specific beneficiary representative duties to the School Children's Trust Section and allocate more of the Section resources to beneficiary oversight duties.

In the review of the School Children's Trust Section duties, three concerns were identified. First, the Section's 2008 budget request failed to provide adequate justification for a requested budget increase based on their outlined duties. Second, the Section needs to improve budgeting and general management. They had a budget shortfall in FY08, a lack

of office policies and procedures outlining responsibilities, and they had a lack of accurate job descriptions. Finally, future funding for the Section should be more closely scrutinized by USOE management. The Auditors' recommendations are that the State Superintendent direct the Section to create and align appropriate job descriptions, duties, and policies and procedures based on best practices and develop a proposed funding structure consistent with the duties outlined in Utah Code and duties which have been reevaluated and determined by the State Superintendent.

Rep. Garn questioned whether any auditing done of the money distributed, or was the audit just on management. Mr. Christensen responded that the audit was just on management. Rep. Garn questioned if there were any guidelines for the money given to each school. Mr. Christensen responded that the money needs to be spent according to the school improvement plan and needs to be spent on academic purposes. Mr. Underwood responded that in review the of duties, one suggestion to the Superintendent is that there be a post audit function and look at reimbursements. Rep. Garn suggested that a focus for a future audit, is how the \$27 million is being spent at each school.

Sen. Stephenson questioned when each district is required to have an independent audit annually and to issue a comprehensive annual financial report, are these School Land Trust monies included in that report. Mr. Christensen responded that they are included, but they are so small that they are not typically scrutinized.

Rep. Gibson questioned how the funds are distributed. Mr. Christensen responded that there is a formula where 10% is divided among all districts and 90% on a per student basis. Sen. Stephenson responded the effect of that is to give the small districts a larger amount per student because of the overhead of having a small district. Sen. Stephenson commented that this additional dollar per student helps with extras after the overhead. Rep. Gibson questioned how do we go to more local control, letting departments do site audits and see how money is being spent or look at a program. Mr. Underwood responded that it is in the study. They have met with the Superintendent and that would be an internal function she could perform to take existing Section staff to work with the locals. Rather than visiting 90 schools, the Section could put that effort into training to turn that over to locals.

Superintendent Harrington, joined with a new board member, Leslie Castle, responded that they appreciate this audit. The State Trust Lands has operated somewhat independently in the past, now they are fully under the control of the SBOE. The Board considered their beneficiary role very carefully in June 2008, and in that review asked the Superintendent to take direct supervision of the Trust Land Section. The Trust Land Section is visiting with the Board about their Legislative agenda, and getting approval for that agenda; prior to advocating their cause. The Board wants to be compliant and accountable, but at the same time give freedom to enhance and work with the funds.

Rep. Last appreciated the audit and those who are committed to the children. He hopes

that the responsibility of this money will be taken seriously because it is so important to the schools and the beneficiaries of the trust. Superintendent Harrington responded that the employees of the Trust Land Section are grateful to have a more direct line to the Board.

Sen. Hillyard commented that in this year of budget reduction, putting this money in the basic program to fill some of the holes would be great. He has heard a complaint about the administration fees being so high. Have the administrative fees and costs been addressed? Superintendent Harrington responded that those bonuses are not part of the School Land Trust money, and are not taken away from the schools. Sen. Hillyard questioned where the money comes from. Margaret Bird, USOE, responded that these bonuses are paid for performance by SITLA, which has increased tremendously because of generated funds due to direct actions taken since SITLA was created. Sen. Hillyard questioned where the money came from and where it would go if not paid to managers. Ms. Bird responded that it came from revenue generated by SITLA and would have gone into the permanent account bearing interest. Sen. Hillyard questioned what the highest bonuses that have been paid. Ms. Bird responded \$150,000, to six manager of the agencies. Superintendent Harrington noted that this is an area of concern and will bring it up with the Board. Ms. Bird will provide information during the session concerning these bonuses.

Analyst, Ben Leishman described the history of the administrative bonuses. He clarified that it is bifurcated between two committees. This Education Subcommittee oversees the School Land Trust Section, which is the money earned off the interest and dividends of those funds. The main component of the School and Institutional Trust Lands Administration is heard in the Natural Resources Subcommittee. There may be some questions as to whether the Natural Resources Subcommittee should oversee the budget or be moved to this committee. This is a decision that would have to be made by the Legislature.

John Schaff, Auditor General, commented that SITLA was audited approximately two years ago. They saw very clear correlation between the growth of the natural resources taken from the SITLA property and the great gains in this program. The Audit felt that management is doing a very good job in SITLA, but they have concerns of the type of bonuses given, as well as the amount of salary given along with the bonuses and these concerns were noted in a report that followed the audit. He would encourage the Superintendent to follow up on this concern.

Rep. Menlove was on the Agriculture and Natural Resources Subcommittee and suggested a joint discussion would be appropriate. Sen. Stephenson responded that was a good suggestion and could be done during the interim.

Rep. Garn commented that he was on the task force that created SITLA. Before SITLA, trust lands were very poorly managed, and since SITLA there has been a dramatic increase of revenues that has gone into the trust fund. SITLA has the best interest of the trust and

are very good at what they do.

Rep. Fowlke commented that all of the feedback she has received has been that SITLA is doing very well. She questioned if the recommendations of this recent audit encroach on the ability of SITLA to continue its independence in doing these things that have made it so successful. Superintendent Harrington responded that it will in no way impede the work of SITLA.

Sen. Stephenson commented that the audit gives clear direction in the line of authority, and that the State Board seems to be in agreement with the audit. Superintendent Harrington responded that they are very much in agreement and more certain of their roles. Sen. Stephenson questioned one-time funds that were provided by the State Board when the budget for this section needed money, and what has happened with that shortfall? Superintendent Harrington responded that historically the Mineral Release Fund has helped fund the School Land Trust Office. When the budget was a problem last year, she allowed them to borrow from Mineral Release Fund from their next years money, and the budget for the next year would be decreased accordingly. The one-time meant it was a one-time decision, and won't happen again. Sen. Stephenson questioned the name of the School Childrens Fund Section. Superintendent Harrington responded that it has been called many things throughout the audit. It is the School LAND Trust, but the Section is referred to in the audit was the School Childrens Trust Section. Sen. Stephenson commented that it would be helpful to always call it the same thing. Sen. Stephenson was concerned about the section of the audit, giving local school boards greater oversight of the School Community Councils' use of that money. With the School LAND Trust section has made sure that those local community councils own their decisions and have the autonomy from the local school boards not to be dictated to about how to use those monies. Superintendent Harrington responded that rather than going out and check on them physically, they will be doing it from their desks. Local Boards will still have their full ability to move in the direction they want. They will be watching to make sure it doesn't occur. Sen. Stephenson suggested making sure every local board knows that USOE can be an ombudsman for them.

Sen. Stephenson welcomed Leslie Castle and to feel free to ask the committee any questions. Ms. Castle responded that she appreciated and will pass that comment on.

b. *Class Size Reduction*

Rick Coleman, Audit Manager introduced himself. Maria Stahla, Auditor Supervisor introduced herself and Tim Bereece, Audit Staff. Ms. Stahla reported that this report focuses on class sizes, staffing ratios, and validation of elementary-school data in Utah's 40 districts; it does not address charter schools or secondary schools. Since FY1993 the Legislature has appropriated funds for class-size reduction (CSR) by hiring licensed teachers, but hiring specialists and special education teachers does not reduce average class size, but does reduce pupil-teacher ratio. Some classes have more than one grade in a class

and each grade is counted as a separate class by USOE. Some school districts allow a class to be broken into multiple sections and then USOE erroneously counts them as separate classes. For example an extended day program, allowing half of the class attending 75 minutes early and half staying 75 minutes after the normal class, with these classes counting as two or more small classes. Seven concerns relating to the integrity of class size were documented and the following recommendations were recommended: USOE develop a methodology to account for combined-grade classes; round to the nearest number rather than always truncating class size averages on the U-PASS website; provide more guidance on the use of section numbers beyond the requirement that they be unique, or consider no longer using the section field for identifying classes; work with the Legislature to determine whether the average class-size calculation should be adjusted to compensate for periods of smaller classes during the day and additional instruction time provided by teachers; develop a way that schools can report scenarios where daily class size does not match the number of students enrolled in a class; and audit and review data they receive from school districts on a sample basis to further define and formalize data rules as well as train districts on their proper use collection at the district level.

As part of this report, auditors were asked to validate the pupil-teacher and pupil-adult ratios that are required by statute and their results showed that the ratios did not include all teachers and adults and that they are not grade specific. USOE plans to ask the Legislature to eliminate the grade-level requirement because some teachers and most adults are not assigned to a specific grade, they are assigned to a school and work with several grades. The recommendations from the auditors are that USOE: reevaluate the way they calculate the student-teacher ratio to insure they capture all teachers; reevaluate their reporting of a median value; work with the Legislature to determine which teachers and adults should be included in each ratio; provide direction to districts regarding the use of teacher and adult categories; and develop a system to count all instructional adults and aides in schools and report them in the student-adult ratio.

Rep. Newbold assumes the Chair.

Rep. Cosgrove questioned on page 67 with distinction toward Murray School District, there is a difference on one set of data versus another set of data, from the last audit and is there a formula that best determines class size. Mr. Coleman responded there is no formula. Rep. Cosgrove used page 67, teachers for gifted and talented program that have smaller class size, if a formula were used there would be a smaller student-teacher ratio. Mr. Coleman responded that they didn't use a formula, they just used the actual class size and teacher ratio. Ms. Stahla responded that their report did not use a formula, and Appendix K shows the differences at a particular time.

Rep. Gibson questioned if we can get to one way to determine class size. This report paints a different picture than he was led to believe. Class sizes are not as large as he assumed. Ms. Stahla responded that these are the class sizes on Appendix C. Rep. Gibson wanted

clarification on Appendix C., line 20, Nebo district was an example. Ms. Stahla responded that for K-6th grade there are 79 regular classes with 20 students in each.

Rep. Last questioned if there was any official way to challenge the data of the Office of Education and get them to use this data. Ms. Stahla responded that this is a system problem for USOE, and it has been brought to their attention. Mr. Coleman commented that students are reported as K-8, and teachers are reported as K-6, and no one realized the offset. Kindergarten is because of the half day class. Rep. Last commented that we are being compared to other states, with inaccurate information, and it needs to be fixed. Mr. Coleman responded that USOE is working on that.

Sen. Morgan expressed appreciation for the report. She has been concerned that the reports don't reflect the comments she gets from her constituents, and something needs to be done to ensure accuracy. A couple of years ago, she passed legislation on reporting on class size by counting the heads of the number of students assigned to a teacher. She gets complaints from people who checked the class size reports before moving and their students get into much larger classes than reports showed.

Superintendent Harrington introduced Todd Hauber, Associate Superintendent, USOE. Mr. Hauber reported that they are in agreement with the Audit. The challenges are great as they work through the issues raised by the Auditors. He clarified in the U.S. Department of Education reporting, that the issue is not how the data is provided, but how the data is bundled. If you go to the website and drill down further into the data, it is more accurate.

Rep. Newbold questioned if the methodology that DOE is using is accurate based on how it is assembled. Mr. Hauber responded that it is, and the disproportionate reporting is similar to other states. Superintendent Harrington responded that she wants 100% accuracy, and is concerned about the nuances that have existed for some time and have not been captured by the data warehouse, and the very things which should be obvious have not been discovered. They will work on a more accurate portrayal. Rep. Newbold commented that she senses the frustration in how the data is portrayed.

Rep. Gibson commented that it is frustrating that what the public is seeing isn't accurate, and some system of consistency in reporting needs to be developed. Accurate numbers are needed to make important decisions.

Rep. Cosgrove commented about the difference between the last audit and this one. In the last audit there was a distinction between enrollment growth and funding appropriated to reduce class sizes and where it was being distributed. The distinction was in how class sizes were formulated and in the number we had from the USOE in how class sizes were formulated. He wants to ensure the funding is being spent on lowering class sizes and wants a sure number used to identify that class size.

Rep. Poulsen appreciates the audit and wanted to respond to Rep. Gibsons comment that it is frustrating that classes are not portrayed accurately.

4. **Education Budget:**

Overview -- Analyst Ben Leishman distributed two handouts, a Budget Brief and a flow chart. He explained the flow chart. Appropriated funds go through the State Board of Education and from there goes to Minimum School Program, School Building Program, and Education Agencies.

On the Budget Brief, there is a pie chart which shows the major revenue sources for Public Education. The other pages of the brief show the budget changes since the 2008 General Session, with the 2008 Special Session and the 2009 General Session adjustments approved by Executive Appropriations on Friday, and the House and Senate today. In general, Education received a 2.9% decrease over the original appropriation for FY09. Starting in FY10 the state fund budget will be 10.7% lower than it was last year. We are in a growth pattern for student enrollment, so this fall we anticipate about 13,500 students to enter school that were not here in 2008-2009, and the chart shows growth through 2018.

Rep. Gibson questioned if projections for student growth have been accurate. Mr. Leishman responded that historically it has been very accurate because we know birth rate. Mr. Gibson asked what the percentage of birth rate (children turning 5) new enrollment compared with enrollment by those moving here. Mr. Leishman responded that he doesn't know, but in-migration is a small component of the figure.

Rep. Cosgrove questioned what do we anticipate for our FY10 budget from this committee needing to have that work done. Mr. Leishman responded that including today, we have six meetings, but Executive Appropriations could approve more. It is unclear as to whether additional cuts will be required, but we have to go through each budget, approve base budgets, how individual cuts will take place in FY10, any programs that need to be funded that currently are not, what we need for student growth, and what we recommend funding for student growth. Rep. Newbold responded that we have two additional meetings this week, and two meetings next week, with the possibility of a third.

MOTION: Rep. Gibson moved to adjourn.

The motion passed unanimously with Sens. Stephenson and Hillyard, and Reps. Garn, Last, Lockhart and Riesen absent for the vote.

Co-Chair Newbold adjourned the meeting at 4:25 p.m.

Minutes were reported by Karen C. Allred, Senate Secretary

Sen. Howard A. Stephenson, Co-Chair

Rep. Merlynn T. Newbold, Co-Chair